



Republican Policy Committee

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President Clinton's Medicaid Ghost Stories

A White House Halloween: From "Medi-Scare" to "Medi-Fraid"

For months the White House has been disguising the truth about Congress' plan to save and reform Medicare with an orchestrated "Medi-Scare" campaign. Just when you thought the President couldn't go any lower with the politics of fear, you find him digging in the basement. Now, the President is doing the same "costuming" to Congress' Medicaid reform plan with a "Medi-Fraid" campaign.

This effort is simply President Clinton telling ghost stories as he prepares for Halloween. Congress' Medicaid reform plan is *a direct response to the pleas of state governors and state legislatures* for relief from onerous, misguided Washington regulation. Until the White House decided to politicize it, this was a bipartisan plan — one the *President himself supported* when he was Arkansas' governor.

The Truth About Clinton's Nursing Home Ghost Stories

- Medicaid's spousal impoverishment provisions are not altered by the Finance Committee's reconciliation instructions. Period. These remain as they were.
 - However, in 1993 *President Clinton signed a law requiring states to confiscate Medicaid recipients' assets* to reimburse Medicaid expenses. No one outside his own party supported passage of that law, the 1993 Omnibus Reconciliation Act.
- National nursing home standards will not be eliminated. The Finance Committee establishes numerous specific standards that states must meet in order to receive any federal funds. These include a dozen assurances protecting and enforcing nursing home residents' rights, including freedom from abuse.
- The Senate Finance Committee proposal regarding nursing homes is in **direct response to the nation's governors** who have repeatedly pleaded to Congress to relieve them from confusing, inflexible, and nonsensical federal regulations, that have in many cases themselves resulted in **diluted** state standards.
 - Meanwhile, President Clinton as governor of Arkansas signed a letter from the National Governors' Association calling on Congress to provide them relief from crushing Medicaid mandates, including nursing home requirements.

America should expect many other tricks, not treats — and certainly not the truth — when it rings the White House doorbell between now and Halloween. And, so from us, here's a dose of reality.

The 'Spousal Impoverishment' Ghost Story

"...The Republican Congress proposes to do away with the law that now permits states from forcing seniors who have to go into nursing homes to sell their cars, their homes, even empty their bank accounts, before their husbands and wives can get the government help for the care they need."
(President Clinton, Weekly Radio Address, 10/7/95)

This is untrue. First, the Senate Finance Committee did not alter what is known as Medicaid's spousal impoverishment provisions. These remain as they were. Period. Secondly, Medicaid is financed and administered jointly between the federal government and the 50 states, and state laws to protect spouses of nursing home residents from becoming impoverished before the government begins to pay the bills exist in every state: **37 of them are more generous than the federal minimum standards**, and 22 of these are as generous as federal law allows — this according to the Health Care Financing Administration (HCFA)'s 1994 survey of 46 states.

The President's concern for spousal impoverishment is particularly ironic considering the fact that *he signed a law in 1993 that required states to confiscate Medicaid recipients' assets* to reimburse Medicaid expenses. That law, the 1993 Omnibus Reconciliation Act, was supported by no one in Congress outside the president's party.

In the Medicaid debate, beneficiaries should not fear Congress, but instead the White House.

The Degradation of Care Ghost Story

"...The Republican plan would eliminate all national standards for nursing home care. It would turn back the clock to the days when children worried about whether their parents in nursing homes had to actually be afraid of danger and degradation."
(President Clinton, Weekly Radio Address, 9/30/95)

This remark represents a complete reversal of President Clinton's position who as governor recognized the threat to the states's financial health as a result of Medicaid mandates. Since the enactment of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), states have been pleading for relief from the confusing and duplicative federal nursing home standards — which, in many cases, **dilute** state standards.

- State regulation of nursing homes existed prior to federal regulations and in many cases these were actually tougher than the federal laws that superseded them.
- Federal regulation issuance under the OBRA 1987 has been a disaster from **Day One**. Federal mandates have come in a haphazard fashion over the last eight years with the most recent coming just this past July. States have been responsible for regulations even before they were formally issued as well as being retroactively responsible for them after they were issued.

The Governors' Pleas

State governors have been pleading for relief from the crushing mandates since they began to feel the effects of the law. *In a letter then-Governor Clinton signed*, the National Governors' Association called on Congress to: *"adopt a two year freeze on the enactment of further Medicaid mandates. Our resolution was based on our increasing concern with the impact of the last three years of Medicaid mandates on our budgets, and, consequently, on our ability to properly fund education and other important services. The Governors continue to support state options to assure Medicaid eligibility to our most vulnerable populations"* (National Governors' Association, Letter to Congress, August 1, 1989).

The resolution the governors passed remained in place for a year, and was reiterated and reinforced in a new Policy Statement:

- "The increased costs of Medicaid . . . are exacerbated by four years of Medicaid mandates. **States must have some immediate relief from the real and pressing problems presented by the Medicaid program if they are to move forward on long-term solutions.**"
- "Accountability based upon results is a better test of state performance than strict compliance with mandated procedures. In return for flexibility, the Governors seek to work with the administration and Congress to develop state-specific mutually acceptable agreements to measure accountability."
- "In the Omnibus Reconciliation Act of 1987, Congress mandated extensive new quality assurance measures for the Medicaid nursing home program. **The statutory language permits limited state flexibility and puts Congress in the position of micro-managing the program.**"
(NGA, Medicaid Policy Statement, February, 1991; emphasis added)

This policy remained in effect for four years, and was again renewed because the federal regulations continued to be viewed as confusing, inflexible, and "micro-managing," and downright nonsensical.

Confusing: "Too often, states have had to implement statutory changes and in some cases, have been held accountable for unclear laws, even though HCFA failed to provide clarification through implementing regulations."

Inflexible and "micro-managing": "Congress mandated extensive new quality assurance measures for the Medicaid nursing home program. The statutory language permits limited state flexibility and puts Congress in the position of micro-managing the program."

Downright nonsensical: "Under current law, federal audit and disallowance requirements do not discriminate between violations of 'obscure policies' and those that have direct harm to beneficiaries. The statute should be revised to prohibit federal practices that impose heavy penalties when the violation constitutes no beneficiary harm."

(NGA Medicaid Policy, Winter 1995).

The State of California's experience with the new federal requirement for states to independently assess nursing home placements is a case in point. After spending \$28.5 million to review 81,500 patients in 1989, California found only five inappropriate placements — that's six-one-thousandths of one percent, at a cost of \$5.6 million per wrong placement. As bad as this is, even worse is the fact that California already had provisions that would have changed those five placements, at a tiny fraction of the cost.

Senate Nursing Home Standards Plan

Under the Senate Finance Committee plan, the following specific standards are established that **states must meet in order to receive any federal funds**. The Committee responded to governors' request by granting them the authority to write the standards under the following guidelines. States must establish and maintain standards for quality care, which will be promulgated through the state's legislative, rulemaking or regulatory process. These plans will include the following:

1. Treatment of resident medical records;
2. Policies, procedures and bylaws for operation;
3. Quality assurance systems;
4. Resident assessment procedures, including care planning and outcome evaluation;
5. Safety and adequacy of the physical plant;
6. Qualifications for staff of facilities;
7. Utilization review; and

8. The protection and enforcement of the following resident's rights:

- To exercise one's rights as a citizen or resident of the U.S.;
- To receive notice of rights and services;
- To be protected against the misuse of resident funds;
- To be provided privacy and confidentiality;
- To voice grievances;
- To examine the results of state certification program inspections;
- To refuse to perform services for the facility;
- To be provided privacy in communications and receive mail;
- To have immediate access to the resident's personal physician, visitors, any representative of the state's certification program, and the state long-term care ombudsman;
- To retain and use personal property;
- To be free from abuse; and
- To be provided with prior written notice of a pending transfer or discharge.

Additionally, states will establish and operate a program for the certification and decertification of nursing homes. The state's program will ensure public access to the results of surveys and evaluations of nursing homes. States will also have procedures for sanctioning nursing homes with deficiencies, and procedures for terminating the participation of nursing homes that jeopardize the health and safety of its residents.

Who're You Gonna Call? — Ghostbusters

The Senate Finance Committee's proposal takes a common-sense rather than an adversarial approach to nursing home regulation.

- No one is in favor of allowing nursing homes to be unregulated. The question is how to best regulate them. Congress feels that this is best done by those who know them best, and who are responsible for implementing and enforcing the statutes: the states.
- The governors say that conflicting federal standards stand in the way of effective regulation. Under the Senate proposal, states are required to have standards in place, absent only the confusion and contradiction brought in by federal mandates.
- States have a long history of effective nursing home regulation — a longer history than the federal government.
- States have a big incentive to properly regulate — under our proposal it will be their responsibility and it will be the states that get blamed — not some bureaucrat in Washington. States have no incentive to lower standards.

- The same people who elect senators and representatives to Congress elect the governors and the state legislators. There is nothing about the move to Washington or the place on the ballot that makes either the voters or the elected any more or less compassionate. Further, voters know the closer the regulators are to home, the greater their own ability to affect the implementation of the regulations.
- We insure that tough standards will be maintained by the states that have to implement and enforce them.
- States won't get a dime without these standards.
- The cost of these micro-managing regulations are borne by everyone in the state, Medicaid recipients, students, and all other taxpayers, all of whom receive less of other state services.

When the President was a governor this was a bipartisan issue. However, once again the White House is masquerading politics as policy. As Halloween approaches it leads one to wonder: what's the difference between the President and Stephen King when their work is fictional, their only purpose is to scare their audience, and neither of them have Medicaid plans?

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